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No. 92-1382

In The

Supreme Court of the United States

October Term, 1992

Medallion Oil Company, et al.,

Petitioners,

v.

TransAmerican Natural Gas Corporation, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

MOTION OF TEXAS INDEPENDENT PRODUCERS AND ROYALTY OWNERS ASSOCIATION TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* IN SUPPORT OF THE PETITIONERS

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MOTION OF TEXAS INDEPENDENT PRODUCERS AND ROYALTY OWNERS ASSOCIATION TO FILE BRIEF AS *AMICUS CURIAE*

Pursuant to Rule 37.2 of the Rules of this Court, the Texas Independent Producers and Royalty Owners Association ("TIPRO") moves for leave to file the accompanying brief as *amicus curiae* in support of the petitioners. TIPRO is a trade association of Texas independent producers and royalty owners, chartered in 1946, and is vitally interested in the uniform application of Texas oil and gas law in any matters that affect producers and royalty owners. TIPRO is concerned that the decision rendered by the court below may be in conflict with controlling Texas law, or, alternatively, involves an unresolved area of Texas law which should be certified to the

Texas Supreme Court. Because of the substantial effect the lower court's opinion could have on the mineral interests of Texas producers and royalty owners, this matter should be certified to the Texas Supreme Court.

The petitioners (Medallion Oil Company, H.S. Finkelstein, A. David Benjamin Finkelstein Irrevocable Trust, and Susan Raphael Finkelstein Irrevocable Trust) consented to the filing of this brief. TIPRO has sought the consent of the respondents (TransAmerican Natural Gas Corporation, TransAmerican Pipeline Corporation, Southern States, Inc., Southern States Exploration, Inc., Laredo Exploration, Inc., Southern Petroleum Trading Co., Ltd., TransAmerican Gas Transmission Corporation, and JRS Realty, Inc.) but respondents have not yet responded to that request. TIPRO accordingly seeks leave to file the accompanying brief as *amicus curiae*.

Respectfully submitted,

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QUESTION PRESENTED

Whether this Court should reverse the lower court for refusing to certify an admittedly unresolved question of Texas law to the Supreme Court of Texas instead of deciding that question and thereby undermining the viability of all overriding royalty interests in Texas oil, gas and other minerals.

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INTEREST OF *AMICUS CURIAE*

As shown in the motion accompanying this brief, the Texas Independent Producers and Royalty Owners Association ("TIPRO") is a trade association of Texas independent producers and royalty owners, chartered in 1946, and is vitally interested in the uniform application of Texas oil and gas law in any matters that affect producers and royalty owners. TIPRO is concerned that the decision rendered by the court below may be in conflict with controlling Texas law, or, alternatively, involves an unresolved area of Texas law which should be certified to the

Texas Supreme Court. Because of the substantial effect the lower court's opinion could have on the mineral interests of Texas producers and royalty owners, this matter should be certified to the Texas Supreme Court.

ARGUMENT

A Texas appellate court, addressing a case similar to the one at bar, held that if a lease is a producing lease, an attempt to surrender the lease by the lessee will be ineffective as to the holder of an overriding royalty interest under the lease. *Cain v. Neumann*, 316 S.W.2d 916 (Tex. Civ. App. – San Antonio 1958, no writ). That is, a lessee cannot "wash-out" an overriding royalty interest simply by terminating a producing lease, and releasing the same property.

The lower court in this case declined to follow *Cain*, and instead relied on *Sunac Petroleum Corp. v. Parkes*, 416 S.W.2d 798 (Tex. 1967), in which the underlying lease terminated by its terms, and a new lease was executed a year or so later. In that instance, the override was terminated.

TIPRO recognizes that the Fifth Circuit attempted to understand and apply Texas law in this action, but could not do so because Texas law is unsettled in this area. "We must admit, however, that neither *Sunac* nor *Cain* controls the case before us." *Medallion Oil Co. v. TransAmerican Natural Gas Corporation*, 979 F.2d 40, 41 (5th Cir. 1992).

TIPRO believes that *Cain* and the lower court's ruling may well represent conflicting authority regarding the

rights of overriding royalty interests in this situation. Because of the possible conflict between the federal and state cases, and the enormous impact this law has on the ownership of overriding royalty interests in Texas, TIPRO believes that any conflict should be resolved by the Texas Supreme Court. TIPRO therefore urges this court to seek guidance from the Texas Supreme Court by certifying the following question:

> Can a lessee destroy an overriding royalty by "surrendering" the lease while the lease continues to produce in paying quantities?

TIPRO takes no position in this brief as to the proper outcome of such a determination, but recognizes the unsettled area in Texas law concerning the rights of overriding royalty interests (and the resulting obligations on the part of the lessees), and believes this matter is best resolved by the Texas courts. This court should grant the petition for writ of certiorari.

Respectfully submitted,

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